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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

YOLANDA CLARK,

Plaintiff and Respondent,

v.

MARGIE A. CLARK,

Defendant and Appellant.

B235881

(Los Angeles County  
Super. Ct. No. YQ015910)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Susan K. Weiss, Judge. Affirmed.

Margie A. Clark, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Margie Clark (appellant) appeals from the trial court's issuance of a temporary restraining order prohibiting her from coming within 100 yards of respondent Yolanda Clark's residence, car, and place of employment. We affirm.

***FACTUAL BACKGROUND AND PROCEDURAL HISTORY***

On July 20, 2011, respondent filed a request for a domestic violence prevention order pursuant to Family Code sections 6200 et seq.<sup>1</sup> against her sister, appellant.

In her written request, respondent stated that appellant showed up at their mother's house when respondent was there to check on their mother.<sup>2</sup> Appellant drove up to the house and blocked respondent's car. Respondent claimed that appellant tried to drag her out of her car and began to physically assault and threaten her. Respondent also alleged that a neighbor helped her call the police, but appellant threatened that neighbor. Appellant told respondent that she had "heat," showing respondent her purse. Respondent also alleged that a second event occurred in which she was threatened in court by appellant. Finally, respondent alleged in her petition that she had scars, scratches and bruises as evidence of the physical altercations between her and appellant.

Appellant submitted a lengthy letter in opposition, and it was difficult to ascertain the facts and arguments she was presenting. It appears that appellant claims respondent and her boyfriend live at the mother's house, selling and using drugs. Appellant asserted that respondent induced appellant's 19-year-old son into staying in the house, where he is using and selling drugs. According to appellant, respondent sought this protective order to keep appellant away from her son, so that respondent can continue to use her son to deal drugs and generate income.<sup>3</sup>

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<sup>1</sup> All subsequent statutory references shall be to the Family Code unless otherwise indicated.

<sup>2</sup> The application for restraining order states the date of the incident as July 20, 2011, but the parties later stated the incident took place on June 29, 2011.

<sup>3</sup> Appellant also contends respondent manipulated their mentally vulnerable mother into getting a separate protective order against appellant.

At the hearing on August 10, 2011, both parties appeared. Respondent described the physical altercation that took place in great detail, explaining that she does not live at the mother's house. Appellant maintained that she has only had verbal altercations with respondent. Respondent conceded she did not complete the call to the police because the man who allowed her to use his cell phone had to leave, and not because appellant had threatened her.

Both appellant and respondent agreed at the hearing that their altercations are also fueled by an underlying dispute over their mother's government aid check, which was cut off in 2010 for a fraud investigation. Appellant admitted that she reported respondent for a fraud investigation because respondent took over their mother's house. Appellant insisted respondent is keeping her son against his will and uses him to sell drugs because she is angry that appellant reported her. However, respondent claimed appellant was upset that she stopped receiving their mother's government check, and in retaliation, she reported that their mother uses drugs.

Upon hearing the parties' contentions, the trial court issued a domestic violence restraining order for one year, ordering appellant to stay 100 yards away from respondent's residence, car, and place of employment. The court also instructed respondent to apply for an extension at the end of that year if she still needed a protective order.

Appellant filed a timely appeal on September 8, 2011.<sup>4</sup> Respondent did not file a brief.

### ***DISCUSSION***

A temporary restraining order issued under the Domestic Violence Protection Act (DVPA) (§ 6220) is of the nature of an order granting an injunction, thus it is "separately

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<sup>4</sup> Appellant's brief did not comply with the requirements of California Rules of Court, rule 8.2(a) but we elect to disregard the noncompliance pursuant to rule 8.204(e)(2)(c). In addition, her notice of appeal incorrectly indicated she was appealing from a judgment after an order granting a summary judgment motion but indicates the date the restraining order was entered.

appealable.” (*McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 357; Code Civ. Proc., §904.1, subd. (a)(6).)

On appeal from the issuance of a domestic violence temporary restraining order, we apply an abuse of discretion standard of review to determine whether the trial court exceeded the bounds of reason. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420 (*Gonzalez*); *Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1079.) “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” (*Gonzales, supra*, 156 Cal.App.4th at p. 420, citing *Shamblin v. Brattain* (1988) 48 Cal.3d 474, 478-479.)

The DVPA authorizes issuance of a restraining order “to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of violence.” (§ 6220; *Gonzalez*, 156 Cal.App.4th at p. 421.) “The Legislature has set forth the relevant factors in Family Code section 6300, by providing that a domestic violence restraining order may be issued ‘if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.’” (*Quintana, supra*, at p. 1079; *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.) Abuse is defined as intentionally or recklessly causing or attempting to cause bodily injury, sexual assault, or placing a person “in reasonable apprehension of imminent serious bodily injury” to that person or to another. (*Gonzalez, supra*, at p. 421; § 6203.)

Courts construe the DVPA liberally, and may issue a domestic violence restraining order when the applicant makes the requisite showing by a preponderance of the evidence. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137.)

In her lengthy letter brief, appellant appears to be contending on appeal that the temporary restraining order should not have been issued because she was not involved in a physical altercation with respondent and that she was simply trying to save her son.

Because respondent in this case has failed to file a brief, we “decide the appeal on the record, the opening brief, and any oral argument by the appellant . . . reversing only if

prejudicial error exists.” (*Nakamura v. Parker, supra*, 156 Cal.App.4th at pp. 333-334; citations omitted.)

Here, nothing in the trial court’s record demonstrates the court erred in exercising its discretion. The trial court based its decision on respondent’s petition for a temporary restraining order, which described particular incidents of abuse that occurred when appellant attacked respondent. Respondent alleged that appellant attacked her by pulling her hair, trying to pull her out of her car, and threatening her with “heat,” which appeared to be a threat to use a firearm. The trial court also heard both appellant’s and respondent’s arguments.

We defer to the trier of facts on issues of credibility because it is a function of the trial court to evaluate the parties’ testimony and the evidence they present. Thus, “[n]either conflicts in the evidence nor “testimony which is subject to justifiable suspicion ... justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.”” ( *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) These facts are sufficient to constitute abuse that warrants a temporary restraining order within the meaning of the DVPA.

Appellant contends on appeal that the court should have considered her reasons for trying to retrieve her adult son from respondent’s care. She claims respondent was responsible for her son’s drug addiction. She includes in her brief medical documents which indicate that her mother Ethel Clark was found to be delusional and unable to care for herself and that respondent was found to be under the influence of drugs and could not care for her. Appellant then had to provide for and assist her mother. The facts alleged in appellant’s brief do not refute respondent’s claims, nor do they provide a justification for appellant’s actions. Appellant does not dispute in her brief that she was at her mother’s house on June 29, 2011, and does not dispute that she has had disagreements with her sister. As noted by the trial court, appellant’s son is an adult, and there is no indication that he is not capable of making his own decisions. Given the

information it had before it, the trial court did not abuse its discretion in issuing the temporary restraining order.

***DISPOSITION***

The judgment is affirmed. Appellant shall bear her own costs on appeal.

**WOODS, Acting P. J.**

**We concur:**

**ZELON, J.**

**JACKSON, J.**